

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

November 29, 2018 - 9:00 a.m.
49 Donovan Street
Concord, New Hampshire

DELIBERATIONS

DAY 2
Morning Session ONLY

{Electronically filed with SEC 12-17-18}

IN RE: SEC DOCKET NO. 2015-04
Application of Public
Service of New Hampshire
d/b/a Eversource
Energy for Certificate
of Site and Facility
(Deliberations)

PRESENT FOR SUBCOMMITTEE/SITE EVALUATION COMMITTEE:

Patricia Weathersby
(Presiding Officer)

Public Member

David Shulock, Esq.
Dir. Elizabeth Muzzey
Charles Schmidt, Admin.
Dep. Dir. Christopher Way
Dir. Michael Fitzgerald
Susan Duprey

Public Utilities Comm.
Div. of Hist. Resources
Dept. of Transportation
Div. of Economic Dev.
Dept. of Env. Services
Public Member

ALSO PRESENT FOR THE SEC:

Michael J. Iacopino, Esq.
Iryna Dore, Esq.
(Brennan, Lenehan, Iacopino & Hickey)

Counsel for SEC
Counsel for SEC

Pamela G. Monroe, SEC Administrator

(No Appearances Taken)

COURT REPORTER: Cynthia Foster, LCR No. 14

I N D E X

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1 public uses, scope and scale of the change in
2 the landscape, evaluation of overall daytime and
3 nighttime visual impacts, and the extent to
4 which the proposed facility would be a dominant
5 and prominent feature, and then if there are
6 avoidance or mitigation measures the
7 effectiveness of those.

8 So 49 shows us the existing conditions here
9 in Newington and 50 shows the proposed Project
10 within the landscape.

11 MS. DUPREY: So is this a view from the
12 scenic road? Is that why we're looking at this?

13 MR. SHULOCK: I believe so. Yes.

14 MR. SCHMIDT: Old Post Road.

15 PRESIDING OFFICER WEATHERSBY: I have a
16 question. I may just be a little confused, but
17 to me it looks like it's looking across the
18 Frink Farm because -- am I incorrect or is this
19 not this photo?

20 MR. SHULOCK: I don't think that's the
21 Frink Farm. Frink Farm is on Little Bay Road.

22 PRESIDING OFFICER WEATHERSBY: Thank you.

23 MR. SHULOCK: So I think we can definitely
24 see the Project crossing what would have

1 otherwise been an open field.

2 MR. WAY: So is it going underground in
3 this area?

4 PRESIDING OFFICER WEATHERSBY: I think it
5 is. I think this is a continuation. It's right
6 in the area of the Frink Farm. And I think --
7 in this area.

8 DIR. MUZZEY: Yes. Frink Farm is on the
9 corner of these two roads.

10 MR. SHULOCK: Can we agree no adverse
11 visual impact?

12 DIR. MUZZEY: I wanted to just note in the
13 narrative the proposed structure information
14 visible structure is one H-Frame and it's 61
15 feet tall. So although this may be very close
16 to where it's going underground, at least the
17 information on page 48 tells us that there is
18 something visible.

19 MR. FITZGERALD: It's definitely a tower.

20 MR. SHULOCK: In 49 I see a tower and a
21 line. Has that all been undergrounded? Do we
22 know?

23 DIR. MUZZEY: Page 49 is existing
24 conditions. So if you're seeing a tower --

1 MR. SHULOCK: I'm sorry. 50.

2 MR. FITZGERALD: 50.

3 PRESIDING OFFICER WEATHERSBY: I direct
4 your attention to Exhibit 96.

5 MS. DUPREY: I would just note this
6 exhibit's date is April of 2016 or at least the
7 first map is dated that.

8 DIR. MUZZEY: And what page of Exhibit 96?

9 PRESIDING OFFICER WEATHERSBY: I think it's
10 PDF 14.

11 DIR. MUZZEY: Thank you.

12 PRESIDING OFFICER WEATHERSBY: Page 15.

13 MR. SHULOCK: I think we actually went
14 through this one.

15 MR. WAY: We did.

16 MR. FITZGERALD: It's underground.

17 MR. WAY: It's underground.

18 MR. SHULOCK: So I think what that needs
19 for us to look at if we want to do it are the 13
20 areas that were identified by Mr. Lawrence and
21 which the Applicant has agreed to apply
22 mitigation measures to.

23 PRESIDING OFFICER WEATHERSBY: I think
24 there's one that we said we'd come back to at

1 some point which was the Newington side of the
2 Bay.

3 MR. SHULOCK: Okay.

4 PRESIDING OFFICER WEATHERSBY: Can't
5 remember where the sim is, but we'll find it.
6 We were looking at it in connection when we were
7 talking about the Durham.

8 MR. IACOPINO: 186.

9 PRESIDING OFFICER WEATHERSBY: Sounds like
10 it may be 186.

11 MR. WAY: What page?

12 MR. FITZGERALD: 186 is only the Durham
13 side.

14 PRESIDING OFFICER WEATHERSBY: It's not
15 186.

16 DIR. MUZZEY: Try 269.

17 PRESIDING OFFICER WEATHERSBY: 269, PDF 4
18 and 3.

19 MR. SHULOCK: We didn't make a decision on
20 this one?

21 PRESIDING OFFICER WEATHERSBY: We were
22 talking about it with regard to the concrete
23 mattresses and some vegetation, but we never had
24 any discussion about scope, scale, prominence

1 and dominance.

2 MR. FITZGERALD: We never had a discussion
3 about what?

4 PRESIDING OFFICER WEATHERSBY: The factors
5 that we've been going through, the scope and the
6 scale and prominence and dominance, the
7 character of the area, et cetera.

8 DIR. MUZZEY: So one of the more prominent
9 aspects to the after view that I see is that
10 there's additional tree cutting and then there
11 is the addition of the concrete mattresses.
12 Again, we're not certain of the degree of their
13 visibility, but we did agree yesterday that the
14 tinting provides a little bit of camouflage for
15 them, particularly before they weather through
16 time and have vegetation potentially grow on
17 them.

18 I think the difference is not unreasonably
19 adverse in my point of view for the image we
20 have here. That is, noting that we don't have
21 the specific final locations of all the concrete
22 mattresses. Appears to be mainly a little bit
23 of tree clearing, a little bit of tree cutting.

24 MS. DUPREY: Agreed.

1 PRESIDING OFFICER WEATHERSBY: I think this
2 is another good location for a vegetation plan,
3 mitigation plan. May be able to soften this a
4 little bit.

5 MR. WAY: Agreed.

6 PRESIDING OFFICER WEATHERSBY: Note that it
7 is private property but it would fall under the
8 proposed condition of working with private
9 property owners who desire vegetation management
10 plans.

11 MS. DUPREY: I presume we'd have to
12 condition it on the suitability of doing
13 vegetation on top of the line coming up there.
14 I just don't know. I sort of remember that
15 surface. It looks flat here, but it's not as I
16 recall. It's sloped down. So just with all
17 that in mind.

18 DIR. MUZZEY: And further clarify though
19 the way I am looking at this today, it's due to
20 the public access to this view from Little Bay,
21 and although the suggestion is planting
22 potentially on private property, it's in order
23 to address the view from a public location.

24 MR. SHULOCK: So then can we all agree, no

1 unreasonable adverse impact, but we'd like to
2 see a vegetation management plan. Anybody
3 disagrees?

4 (No verbal response)

5 MR. SHULOCK: So that then takes us to the
6 13 locations identified by Mr. Lawrence, but
7 first why don't we look at the, there is a
8 dispute over whether these are scenic, whether
9 we're required to condition them, et cetera.
10 Regardless, the Applicant and Counsel for the
11 Public have agreed to a condition and what we
12 need to do is decide whether we accept that
13 condition and make it part of our order. So why
14 don't we first look at that. That's on Exhibit
15 193. And I have page 8. Condition 32. We have
16 to think about whether this is the condition
17 that we actually adopt, but I just wanted you to
18 have an opportunity to familiarize yourself with
19 it before we start going and looking through the
20 actual locations. And my proposal would be that
21 we just go through all the locations and look at
22 them and then make one decision whether we
23 accept the condition and not consider them
24 individually but as a group. If everybody

1 agrees to that.

2 MR. FITZGERALD: What page were we on,
3 Dave?

4 MR. SHULOCK: The condition is Exhibit 193,
5 electronic page 8, Condition 32.

6 DIR. MUZZEY: Do we have one map in the
7 record that shows all 13 of these locations?

8 MR. SHULOCK: I don't know.

9 DIR. MUZZEY: Okay. Thank you.

10 MS. DUPREY: Can you point me to an exhibit
11 that shows the 13 locations?

12 MR. SHULOCK: We're going to go through and
13 look at pictures of all of them in a second. So
14 these are in Exhibit Counsel for the Public 5 A.

15 DIR. MUZZEY: 5 A appears to be the
16 historic consultants. Is it 4 A?

17 MR. SHULOCK: 4 A.

18 DIR. MUZZEY: Okay. Thank you.

19 PRESIDING OFFICER WEATHERSBY: And the
20 pictures start on, I think, 15 through 20. No.
21 They start sooner. Sorry.

22 MR. SCHMIDT: Electronic page 10.

23 MR. SHULOCK: So on electronic page 10, we
24 have the Fox Point Road crossing looking

1 northeast. On page 11, we have the Durham Point
2 Road crossing looking southeast. On 12 we have
3 the UNH Main Street railroad overpass looking
4 west.

5 MS. DUPREY: On this one, what's new?

6 MR. SHULOCK: We don't have before and
7 after pictures for these.

8 MS. DUPREY: Okay. These are all before.

9 MR. SHULOCK: Actually going through this
10 way is not lining up with my list of what the
11 actual crossings are, but I think they do
12 actually start on 15.

13 MR. WAY: So Mr. Shulock, in terms of what
14 we're supposed to decide with regards to these
15 13 locations, I'm trying to see utility of these
16 drawings to our decision making with regards to
17 the 7 criteria.

18 MR. SHULOCK: These are, what we're doing
19 is deciding whether we're going to accept the
20 condition that was agreed to between the
21 Applicant and Counsel for the Public to settle
22 their disagreement over whether these are
23 areas --

24 MR. WAY: And both have already agreed.

1 MR. SHULOCK: Both have already agreed,
2 right, but we can accept that condition or not.
3 I don't think they're actually asking us to
4 decide before and after and whether there's an
5 unreasonable adverse effect at these locations,
6 but --

7 MR. WAY: Because that would be the hard
8 part to determine if there's an unreasonable
9 adverse effect. I'm also trying to think under
10 what circumstances I would say no, I don't
11 agree.

12 MR. SHULOCK: That's why I thought we could
13 really just flip through and look at them so
14 that we're familiar with them and then know that
15 that's what they've agreed to do.

16 MR. FITZGERALD: Seems to me that I read
17 yesterday that in Mr. Lawrence's report and his
18 testimony that he agreed with Mr. Raphael that
19 their real disagreement was over two sites.
20 There were 13 that he identified. And in
21 reading Mr. Lawrence's report, I think he said
22 that of the, that he agreed that two were scenic
23 resources and that the other 11 were, I forget
24 his terminology, but that they were significant

1 and that he would include them, but he didn't, I
2 don't believe that he gave criteria for
3 including them other than that he seemed to
4 think that that was, that they were scenic
5 sites.

6 MR. SHULOCK: And because they agreed to
7 provide some mitigation at these points
8 regardless of what they are, I didn't go through
9 and try and make those determinations. If you
10 feel it's important, we can do that.

11 MR. FITZGERALD: No, I just want to make
12 sure that the context is right that they agree
13 that these don't rise to, at least 11 of these
14 don't rise to scenic resources, but Mr. Lawrence
15 still thinks that they should be mitigated.

16 MR. SHULOCK: Okay.

17 MS. DUPREY: Do you happen to know which
18 the two are?

19 MR. FITZGERALD: I think I read that in
20 Mr. Lawrence's -- I don't know off of top of my
21 head.

22 MS. DUPREY: Okay.

23 MR. SHULOCK: On electronic page 13, we're
24 looking at the UNH Gables Apartment Complex.

1 On 17 we're looking at the view south from
2 Gregg Hall at UNH. And again, we don't know
3 what, at this point what the vegetation
4 management plan is or exactly what it will do.
5 That's something we'll have to consider when we
6 look at the condition.

7 On electronic 18 we see the Fox Point Road
8 crossing in Newington. We also see Fox Point,
9 but I don't understand that they're doing
10 anything there.

11 On electronic 20, again, we see the Fox
12 Point Road crossing looking southwest.

13 21 is another view at Fox Point Road
14 crossing looking southwest.

15 22 Fox Point Road crossing looking
16 northeast.

17 23 is a meadow north of Fox Point Road. I
18 think this is just to give us some idea of
19 location. I don't think that this is one of the
20 13 locations.

21 On electronic 24 we see the Durham Point
22 Road crossing.

23 25 again shows us the Durham Point Road
24 crossing. Another view of that on electronic 26

1 and electronic 28.

2 If you go to electronic 30, you'll see
3 Sandy Brook Drive crossing looking east.

4 And if you go to electronic 32 you'll see
5 another photo of Sandy Brook Drive looking east.

6 Electronic 33 shows Sandy Brook Drive, west
7 side of crossing. Again, west side of the
8 crossing and Sandy Brook Drive on electronic 35.

9 And electronic 36 we see Frost Drive
10 looking east. On electronic 38 we see that same
11 crossing, Frost Drive looking west.

12 On electronic 39 we have two views of the
13 crossing at Cutts Road.

14 On electronic 40 we have a crossing at
15 Route 108 looking north. And on electronic 41
16 we show that same crossing looking east. On
17 electronic 42 we show that same crossing looking
18 west.

19 On electronic 44 we have another crossing
20 at Mill Road. That's looking south. On
21 electronic 45 it's that same crossing looking
22 north. On 47 again we have Mill Road crossing
23 looking north.

24 On electronic 48 we have a view of Gregg

1 Hall on the UNH campus. So it's actually I
2 think several areas in the vicinity of Gregg
3 Hall. And we see another picture of that on
4 electronic 50. And then another on electronic
5 51.

6 On page 52 we have another location on UNH
7 campus.

8 On electronic 54 we have another picture of
9 the UNH Main Street overpass. Another view of
10 that on electronic 55. 57.

11 On page 62 another view of the location for
12 the Gables Apartment Complex. Again on 63, 64.

13 Then they're also proposing some mitigation
14 at the Gables North Parking lot. That begins on
15 65.

16 Then I think the last one, I'll page
17 through to see, is crossing of Route 4 and we
18 can see that on electronic 68.

19 MR. WAY: Mr. Shulock, I didn't count all
20 those up. Just seemed in my mind that we're
21 talking about more than 13 locations.

22 MR. SHULOCK: There were multiple pictures
23 The locations that we're looking at.

24 MR. WAY: I know there were multiple

1 locations, but were those just the ones that are
2 talked about in the --

3 MR. SHULOCK: I think there were a couple
4 extra, and I tried to indicate where I didn't
5 think it was one of the 13, but the 13 that we
6 looked at were Fox Point Road to Durham Point
7 Road, Sandy Brook Road looking east and west,
8 Frost Drive, Cutts Road, Route 108, Mill Road,
9 UNH in the vicinity of Gregg Hall, UNH in the
10 vicinity of the Main Street overpass, UNH in the
11 vicinity of Gables Apartment Complex, UNH in the
12 vicinity of Gables North Parking, and then this
13 last Route 4 crossing.

14 MR. WAY: Did we address some of those,
15 too, with the discussions of yesterday? I'm
16 thinking about the Gables Apartment Complex.

17 MR. SHULOCK: We looked at some of those.
18 We looked at Gables and we looked at Frost
19 Drive.

20 MS. DUPREY: And the overpass.

21 MR. SHULOCK: And we determined that there
22 was no unreasonable adverse impact. This is
23 just a determination of whether we accept the
24 condition entered into that screening be done.

1 PRESIDING OFFICER WEATHERSBY: So in my
2 mind, this raises just a couple points. One,
3 while all 13 locations were identified, it's
4 really 26 locations because it's both sides of
5 the road. So depends on how you define
6 location, but I think as we're looking at the
7 plans, there would be probably 26 plans, if
8 Mr. Lawrence believes both sides are necessary.
9 So I just wanted to say that's my belief of
10 what's happening here in these 13 locations with
11 two sides.

12 The other is that I certainly don't
13 disagree with Mr. Lawrence that these are places
14 of potential visual impact that are key
15 observation points that people pass, public
16 passes by many times each day, and I think in my
17 mind deserve mitigation as suggested by
18 Mr. Lawrence and agreed to by the Applicant.

19 The only issue, if folks agree with that,
20 the only issue I see is whether, we had that
21 issue that we talked about a little bit during
22 cross-examination of when the plans go to
23 Mr. Lawrence for review, does he get to just
24 review, does he get to approve? If he provides

1 comments, does the Applicant have to accept
2 them. So getting down into the wording of the
3 proposed condition a little bit if folks agree
4 that his 13 locations deserve mitigation by
5 vegetative management of planting plans.

6 MR. WAY: I guess from my standpoint, as it
7 stands now, the Applicant agrees to provide the
8 planting plans to Michael Lawrence for review
9 and comment. I think that's sufficient here,
10 particularly when I look at the 13 properties,
11 and I don't really have a measure of what the
12 extent of the issue is going to be or how it's
13 going to look. I don't know if we want to put
14 more stipulation on than that without having
15 more information regarding the full impact.

16 MS. DUPREY: Are we deciding this now?
17 This mitigation?

18 PRESIDING OFFICER WEATHERSBY: Yes.

19 MS. DUPREY: Okay. I thought we
20 specifically said yesterday that one of those we
21 didn't see could be mitigated. That was the
22 overpass at UNH. So I'm a little leery of,
23 honestly I'd like to go back and look at these
24 again tonight. I would like to feel more

1 certain of exactly where the plantings are
2 going. I mean, if I have to decide now, I do.

3 But I would say that I don't have a problem
4 with Mr. Lawrence reviewing and commenting. I
5 have a problem if we're allowing him to overrule
6 it because I think that what should happen is it
7 should go through the process. I'm not looking
8 at the condition. Could you tell us where it is
9 again?

10 MR. SHULOCK: The condition is in Exhibit
11 193 on electronic page 8. It's number 32. And
12 the way the condition works is that the
13 vegetation plans are prepared, Mr. Lawrence
14 would review and comment, right? But it's
15 actually the underlying property owner who
16 approves. So none of this, I don't think any of
17 these properties are actually owned outright by
18 PSNH. It's all within easement. And this
19 allows whoever the underlying property owner is
20 to have the final say as to what gets planted on
21 their property. And to me that seems
22 appropriate.

23 MS. DUPREY: Does that mean that the
24 property owner can say no, I don't want that or

1 does that mean the property owner can say I want
2 ten more of those?

3 MR. SHULOCK: I read it as the property
4 owner can say no.

5 MS. DUPREY: Okay. All right. If that's
6 what we're proposing, I'm okay with that. I
7 don't think that anyone except for the body that
8 this is going to, if everyone is dissatisfied in
9 the end should be overruling, but I'm certainly
10 okay with people, the property owner saying no,
11 I don't want this and getting the input of
12 Mr. Lawrence. Thank you.

13 MR. FITZGERALD: So I think I raised this
14 during the testimony. I guess I tend to think
15 that there's a middle ground between providing
16 for review and comment and Mr. Lawrence having a
17 veto power, so to speak. I think my thought at
18 the time was to add a phrase such as "the
19 Applicant shall give due consideration" or
20 something like that. And there was some
21 discussion between Counsel for the Public and
22 counsel for the Applicant. I think Counsel for
23 the Public indicated that he was satisfied with
24 review and comment because, you know, there is

1 text in here saying work in good faith and that,
2 you know, he seemed to feel that provide for
3 review and comment meant that they would,
4 obviously, could look at the comments and
5 consider them. So I think, I get the impression
6 that CFP did not consider that to be necessary.
7 I guess I just wanted to throw the issue out
8 there and see if anybody else felt, if everyone
9 feels comfortable with the way the language is.

10 MR. WAY: I'm comfortable with the
11 language, and I'm also looking at 33 below and
12 particularly in the event a dispute arises as to
13 the Applicant's compliance with this condition
14 the landowner may submit a claim for resolution
15 as part of the Mitigation and Dispute Resolution
16 Process. So in this mind this seems to be
17 working the way it should be working. I don't
18 want to say for a second tier group of
19 properties but maybe for this group of
20 properties. Both sides are in agreement that
21 this is how it's going to work. I agree that
22 Michael Lawrence has a review and comment but
23 not overrule is appropriate and the landowner
24 having the final say. But then you get to a

1 point where it's really loggerheads and it can
2 go to a dispute resolution process. I'm not
3 sure that's much more to see here in terms of
4 this one.

5 MR. FITZGERALD: Let me just ask if Michael
6 Lawrence doesn't, if Michael Lawrence reviews
7 and says no, this is not, I guess not acceptable
8 is not his purview, but I don't believe this is
9 appropriate mitigation. The way I read this
10 only the landowner and the Applicant can go to
11 dispute resolution.

12 MS. DUPREY: Right.

13 MR. FITZGERALD: So the fact that Michael
14 Lawrence says this is not appropriate, the
15 Applicant would have to take that -- I mean the
16 landowner would have to take that to the
17 dispute?

18 MR. WAY: I guess as I read it that Michael
19 Lawrence says, the proposed planting is probably
20 not going to suffice for this property. Here's
21 my comments to the landowner. And the landowner
22 says I agree. And then offers that to
23 Eversource and then Eversource can then respond
24 to it. If it doesn't work out, then they can go

1 to dispute resolution.

2 MR. FITZGERALD: Can I, one of the things
3 that we're discussing here is not the property
4 owner's view. We're discussing the view from a
5 public, most of these from a public crossing or
6 scenic highway or something. So the landowner's
7 role here is to say I'm willing to accept the
8 mitigation for a view that is not on my land,
9 I'm willing to accept it on my land. He's not
10 necessarily having the, you know, the landowner
11 might feel the mitigation interferes with my
12 view of the road. I don't want to get too deep
13 on this, but I'm just concerned that it is CFP
14 and Mr. Lawrence's view that I think is
15 appropriate here to be considered by the
16 Applicant. The landowner's only role is to say
17 yes, I'll accept this or no, I won't. The
18 landowner is not representing the public's view.

19 MS. DUPREY: No, but it's the landowner's
20 property, and I don't think that we can ignore
21 that, and I assume that that's why this was
22 structured the way that it was structured.
23 Mr. Lawrence can't overrule a property owner.
24 He can give his advice.

1 MR. FITZGERALD: Um-hum.

2 MS. DUPREY: But at the end of the day, it
3 is the landowner's property, and I just don't
4 see how we can go further than that, and I have
5 to say for myself I couldn't support something
6 further than that. I think actually it's
7 balanced pretty well.

8 PRESIDING OFFICER WEATHERSBY: So I agree
9 with Ms. Duprey concerning the landowner's
10 property rights. The landowner gets to make the
11 decision here. A lot of the land is, will be
12 public land. There's a lot of areas to UNH.
13 There's the edges of the road which are owned by
14 the towns. But when you get on to private
15 property, the landowner should be the one that
16 decides what goes on their property, and they
17 may have other suggestions to help screen the
18 views from their house that they want to
19 incorporate as well. So the landowner is a very
20 integral part, important part of developing the
21 plan for their property.

22 I do like actually Mr. Fitzgerald's
23 suggestion about that the Applicant at least
24 needs to give consideration to Mr. Lawrence's

1 comments. We've heard that they're going to act
2 in good faith, and I don't doubt that they will,
3 but there is a level of distress amongst certain
4 landowners, particularly those that have yet to
5 reach agreement concerning planting plans, and
6 there's a pretty big visual impact on their
7 property that if Mr. -- and those that may just
8 not know what's available to them. And if
9 Mr. Lawrence comes back and says wow, this is
10 really inadequate. You could put some other
11 things here and it could make a big difference
12 that the Applicant at least thinks about that.

13 It may be overkill, but I think there's no
14 harm and there's some benefit to adding language
15 as suggested by Mr. Fitzgerald that the
16 Applicant will give due consideration to
17 Mr. Lawrence's comments.

18 MR. WAY: As I look at that and I just
19 wonder, respectfully, if we're overthinking it.
20 I think providing the plans to Michael Lawrence
21 for review and comment, I think that goes, well,
22 I would hope it goes without saying that, you
23 know, that he's going to comment, those comments
24 are going to be taken seriously by both sides.

1 If we want to put in some more language,
2 you know, I'm fine with that, but I think it's,
3 like I said, I think it's kind of in there. I'm
4 happy as written.

5 MS. DUPREY: I'm not comfortable with
6 adding more language. I feel like this was
7 negotiated by the parties. There were gives and
8 takes, I'm certain, along the way here. We have
9 11 of 13 that we don't, we haven't ruled on
10 whether they rise to the level or not because we
11 have an agreement here. So I feel like that is
12 part of perhaps why this got negotiated the way
13 that it did, and I think it is implicit that
14 you're going to give consideration to it and I
15 assume that Eversource will, and again, if the
16 property owner is dissatisfied, they can go
17 through the process.

18 DIR. MUZZEY: I think if there are points
19 in this condition where we think meaning is
20 implicit or implied, I would suggest that we add
21 language that addresses that implied meaning
22 just to make sure that the many different
23 parties involved with this Project, everything
24 from the Applicant to the many private property

1 owners to a large organization like UNH as well
2 as Department of Transportation in certain
3 roadside crossings, the towns, I think it would
4 be helpful to add just a few words to that
5 sentence about the Applicant and property
6 owners' due consideration which would not add
7 any additional tasks or responsibilities that we
8 feel are already implied in that statement.
9 Just with the idea of good fences make good
10 neighbors, if we feel something is implied,
11 perhaps it should be, I feel it should be
12 stated.

13 MR. FITZGERALD: At the risk of arguing
14 against myself, I just want to point out I
15 wanted to get a sense of the Committee on this
16 issue and didn't have the opportunity at the
17 time, but I do recognize that both CFP and
18 Applicant felt, in my recollection, felt that
19 the appropriate consideration was implied when I
20 asked them. I think I specifically asked to get
21 CFP's opinion, and he said he didn't feel it was
22 necessary but he wouldn't object to it I think
23 was the way he put it.

24 DIR. MUZZEY: I have a question for our

1 counsel.

2 MR. IACOPINO: Yes.

3 DIR. MUZZEY: Good morning.

4 MR. IACOPINO: Morning.

5 DIR. MUZZEY: I seem to remember times in
6 the past where we've had discussions of
7 conditions for various projects before this
8 Committee, and we did ask Counsel for the Public
9 and the Applicant on a break over lunch to
10 confer on certain things, and I'm wondering if
11 that's your recall as well and if so, would this
12 be appropriate for this condition.

13 MR. IACOPINO: The record is closed so to
14 the extent that you are asking any of the
15 parties for additional evidence, it would be
16 improper. However, if all you're going to ask
17 is do the parties that agree to this
18 stipulation, do they, would they object to some
19 change in the language I can certainly ask
20 counsel for the two parties at the time of the
21 break and report that back to the Committee, but
22 as far as asking for any additional facts or to
23 add anything into this, that would be improper.

24 DIR. MUZZEY: We had additionally talked

1 about some other properties yesterday and then
2 first thing this morning that aren't part of the
3 13 that are listed here. That's the Frink Farm,
4 the Getchell property where the project lands on
5 the Durham side of Little Bay and then this
6 morning the Newington side of where the Project
7 lands on the edge of Little Bay. So my thought
8 was that we should add those properties to this
9 list of properties as well.

10 My additional concern is that in some cases
11 some of these properties are historic, and we
12 would not want to put, we would not want to
13 condition the Project on a vegetation plan that
14 may have an adverse effect on their historic
15 characteristics. So I was assuming we would
16 amend this condition with those three properties
17 and that request for review of the Project
18 changes to the Division of Historical Resources
19 so we would be talking about amending the
20 condition in any case if we include those
21 things.

22 MR. IACOPINO: Just from a legal
23 standpoint, if the Committee is inclined to do
24 that, you can certainly just order it. We don't

1 need to make that as part of their stipulation.
2 We can just order that as an additional
3 condition, and you can say under the same terms
4 as contained in the stipulation. That's not
5 something that we need to go to the parties to
6 ask for if the Committee is of a mind to do
7 that.

8 DIR. MUZZEY: Thank you.

9 MS. DUPREY: So I would agree with Director
10 Muzzey that I think the clarification that she
11 seeks, Attorney Iacopino, is worth the inquiry
12 on a break and I'm certainly supportive of
13 adding those conditions as well that you just
14 cited for the three different sites.

15 PRESIDING OFFICER WEATHERSBY: Why don't we
16 take a ten-minute break.

17 MR. IACOPINO: Before we do, it's the
18 Newington side of Little Bay, the Durham side
19 and what was the third one or the first one, I
20 think it was?

21 DIR. MUZZEY: Frink Farm.

22 PRESIDING OFFICER WEATHERSBY: I wondered
23 if other than the Getchell property whether
24 those fall under the private, proposed

1 stipulation which we may or may not adopt. 33,
2 that they're working with all private property
3 owners to develop vegetation management plans.

4 MS. DUPREY: We could add that language to
5 the condition rather than adding it to the other
6 conditions if it's easier.

7 PRESIDING OFFICER WEATHERSBY: So the way
8 that the condition is now, they're working with
9 all private property owners that have views of
10 the Project.

11 MR. SCHMIDT: It doesn't say private
12 property owners.

13 PRESIDING OFFICER WEATHERSBY: All
14 landowners. Okay. So I think the only one that
15 we need to specifically address would be the
16 Getchell property. They might want to confer
17 with themselves.

18 DIR. MUZZEY: I am comfortable leaving it
19 with the wordsmithing of our counsel in order to
20 either come up with an additional condition if
21 appropriate or to amend these two conditions to
22 achieve those goals.

23 MR. IACOPINO: And those goals are to add
24 the three properties that you just mentioned?

1 DIR. MUZZEY: As well as review of the
2 landscaping plan by the Division of Historical
3 Resources when the property is historic, and we
4 still, I don't know if I heard the Committee
5 decide either way about adding the language of
6 the Applicant and property owners' due
7 consideration of Michael Lawrence's comments.

8 MR. IACOPINO: That's why I asked that that
9 be done. I'm not sure what the Committee has
10 decided.

11 PRESIDING OFFICER WEATHERSBY: So we'll
12 take a ten-minute break. We'll see if there's
13 objections to adding due consideration language,
14 and then we'll stretch our legs and come back in
15 ten minutes.

16 (Recess taken 9:54 - 10:05 a.m.)

17 PRESIDING OFFICER WEATHERSBY: We will
18 reconvene.

19 Attorney Iacopino, have you had a chance to
20 consult with the Applicant and Counsel for the
21 Public?

22 MR. IACOPINO: Yes, and neither of them
23 have any objection to adding the language
24 discussed by the Committee or adding additional

1 properties.

2 PRESIDING OFFICER WEATHERSBY: So I suggest
3 that that gets added unless there's an objection
4 from any members of the Committee or anyone
5 wants to discuss it further.

6 (No verbal response)

7 PRESIDING OFFICER WEATHERSBY: Hearing
8 none, looks like that will be a condition that
9 we add.

10 We'll move on. Where are we, Mr. Shulock?

11 MR. SHULOCK: I think at this point we need
12 to make the overall decision on whether the
13 Project creates an unreasonable adverse impact
14 on aesthetics.

15 PRESIDING OFFICER WEATHERSBY: Before we
16 get there, I was reminded that regarding those
17 13 locations plus the ones that we ticked off,
18 we may also want to add Nimble Hill Road as well
19 to that condition because we had discussed that
20 when we looked at the photosimulations. Does
21 anyone disagree with that or want to talk about
22 that further?

23 MR. SHULOCK: I agree with it.

24 DIR. MUZZEY: Do we have a specific

1 location along Nimble Hill Road that we're
2 referring to?

3 PRESIDING OFFICER WEATHERSBY: I think it
4 was those locations the photosimulations were
5 taken from.

6 MR. IACOPINO: It was Exhibit 186 I believe
7 that you reviewed yesterday. Applicant's
8 Exhibit 186 that you reviewed yesterday.

9 The decision of the Committee yesterday was
10 that there was some adverse but not an
11 unreasonable adverse effect and that mitigation
12 may be appropriate.

13 MR. SCHMIDT: I believe we also had
14 conversations though that we're looking at a
15 snapshot, at a spot, not necessarily the whole
16 corridor. There was concern what the rest of
17 the corridor would look like.

18 PRESIDING OFFICER WEATHERSBY: Applicant
19 has agreed to work with all landowners along the
20 route to develop plans. Just that the
21 requirement for Mr. Lawrence's input does not,
22 we haven't revised that proposed condition which
23 I think we're adopting. I guess we should go
24 back and specifically decide that. But those

1 that we want Mr. Lawrence to weigh in on, we
2 should be clear of what those are. It's the 13
3 road crossings that we've talked about, and then
4 there was Frink Farm, Getchell property, and the
5 Newington Little Bay. And now we're looking at
6 whether we want Nimble Hill Road included in
7 Mr. Lawrence's plans or whether, Mr. Lawrence's
8 review, or whether we should just leave that
9 alone and have it worked out between the
10 Applicant and the landowner.

11 MR. SHULOCK: I think that the location
12 that we looked at yesterday for Nimble Hill Road
13 in the photosimulations deserves some additional
14 input other than just the property owner. So I
15 would suggest that that location be added to
16 Mr. Lawrence's review.

17 DIR. MUZZEY: I would agree with that as
18 well. Looking back at my notes from yesterday,
19 I do see that I had recorded Nimble Hill and in
20 particular this very publicly oriented part of
21 Nimble Hill Road with some of the town buildings
22 and nearby. Certainly playing fields that will
23 have a lot of participants, people there, would
24 be an appropriate addition as well.

1 PRESIDING OFFICER WEATHERSBY: Is there
2 anyone that does not want Nimble Hill added to
3 the list of sites that Mr. Lawrence will be
4 commenting on the plans for?

5 (No verbal response)

6 PRESIDING OFFICER WEATHERSBY: Hearing
7 none, we'll add Nimble Hill Road, locations
8 where the photo sim was taken to that list.

9 Do I understand correctly that the
10 Committee also wishes to adopt stipulated
11 proposed Condition 33 which maybe could be
12 brought up? That's the stipulation that
13 requires the Applicant to work with all
14 landowners along the Project route to develop
15 vegetation planting plans and includes that
16 dispute resolution process if there's a
17 disagreement.

18 MR. SHULOCK: I think that's an appropriate
19 condition. I didn't know whether we would
20 discuss that under aesthetics since it was, it
21 would apply to all of the property owners, not
22 just to the public sites we were looking at, but
23 it does feed into the 13 spots we just approved
24 the condition for, and I guess it's more than 13

1 now. So I think we should go ahead and adopt
2 it.

3 MR. SCHMIDT: I would agree with that as
4 well.

5 PRESIDING OFFICER WEATHERSBY: Is there
6 anyone who disagrees with the Committee having
7 that be a condition of the certificate if this
8 certificate is issued?

9 DIR. MUZZEY: I have a question. It refers
10 to the Mitigation and Dispute Resolution Process
11 described in Condition 17 to 21 above. So that
12 is item 17 to 21 in Exhibit 193, and I just
13 wanted to clarify the relationship with
14 Condition 17 to 23 with Exhibit 268 which is the
15 Applicant's and the Counsel for the Public's
16 Proposed Joint Resolution Process Procedures.
17 So I'm assuming that 17 to 21 lay out a process
18 whereas Exhibit 268 lays out the procedures for
19 that process. I did want to make sure that
20 there was nothing updated that would make 17 to
21 21 incorrect with the later exhibit.

22 PRESIDING OFFICER WEATHERSBY: I don't
23 think there's been a change to the stipulated
24 proposed conditions of approval. We can have

1 our condition which we're adopting that is
2 essentially proposed Condition 33, not have that
3 last clause about being described in the other
4 conditions, that it just is a claim is part of
5 Mitigation and Dispute Resolution Process, and I
6 think at some point we should talk about what
7 that process will be. But I think, I get the
8 sense that we want to have a process like that.
9 So I think if we, we can leave the exact
10 wordsmithing to counsel but agree that they may
11 submit a claim for the resolution as part of the
12 Mitigation and Dispute Resolution Process which
13 we will work through at some point.

14 DIR. MUZZEY: That sounds like a great
15 solution. Thank you.

16 MR. FITZGERALD: Before we move to the
17 overall consideration, I guess I wanted to
18 understand when, the Town of Newington has
19 obviously indicated that they want this
20 undergrounded through their entirety of their
21 Historic District, and our statute says
22 regarding the orderly development we have to
23 consider their concerns. I would assume that
24 the concern that they put into their master plan

1 asking for undergrounding of all transmission
2 lines was a visual, based upon a concern of
3 visual impact on their Historic District. Where
4 do we take that up? Is that under historic or
5 visual or orderly development?

6 PRESIDING OFFICER WEATHERSBY: So you read
7 my mind. The other thing we said we would talk
8 about at the end of the day yesterday was as a
9 proposed mitigation measure whether it was
10 appropriate to require burial of the line
11 through the Town of Newington as suggested by
12 the town.

13 MR. FITZGERALD: Okay.

14 PRESIDING OFFICER WEATHERSBY: So I think
15 it's worth a discussion now as part of the
16 mitigation of the visual effects, and also
17 there'll be another discussion, I'm sure, when
18 we talk about orderly development. Ms. Duprey?

19 MS. DUPREY: Is that, is where we're
20 talking about Nimble Hill which we were just
21 discussing and across the playing fields, is
22 that the point as well as maybe through the
23 Pickering Farm.

24 PRESIDING OFFICER WEATHERSBY: So it's the

1 area from like the Flynn Pit through the
2 Pickering Farm. That back land. And then goes
3 underground, as you know, through the Frink Farm
4 and Hannah Lane and then pops up again by Nimble
5 Hill area, Fox Point Road, Mr. Frizzell's
6 property, out to the Spaulding Turnpike so it's
7 those two, those two areas through the
8 residential district.

9 MS. DUPREY: The reason I was asking is,
10 first of all, the testimony in the record I
11 believe is that the Pickerings were not
12 agreeable to it being undergrounded so that
13 would appear to rule that out, but with respect
14 to Nimble Hill we already made a determination
15 that it wasn't unreasonably adverse. So just a
16 little confused as to why we would backtrack on
17 that.

18 PRESIDING OFFICER WEATHERSBY: It's a
19 discussion.

20 MS. DUPREY: Okay. All right. Okay.

21 DIR. MUZZEY: Just a couple thoughts to
22 those comments. The Project is underground
23 through the Newington Center Historic District.
24 There are points within the Historic District

1 that you can see the line where it's not
2 underground but through the district itself it
3 is underground.

4 And regarding the Nimble Hill Road, we did
5 look at that one snapshot, and I think it was
6 Mr. Schmidt that mentioned their concerns
7 yesterday that this is just, that view was one
8 snapshot of the area that continues through the
9 residential areas of Newington before it gets to
10 the Spaulding Turnpike, and so by our looking at
11 that one view and saying at that snapshot it was
12 not unreasonably adverse, I don't believe that
13 we addressed the entire area that the Town has
14 requested undergrounding. The Town is
15 requesting undergrounding throughout the entire
16 Town of Newington.

17 MR. FITZGERALD: Residential.

18 MR. WAY: And I have a question for the
19 Committee, and this may come up later as well.
20 I'm sympathetic to the request for
21 undergrounding, but what we have before us is
22 not underground. It's aboveground. To go
23 underground is a completely different project
24 over a stretch, and the engineering is

1 different, the construction is different.

2 I guess I'm asking the question, if we were
3 to put a condition that it would be, there would
4 need to be undergrounding in a certain section,
5 are we even able to do that without denying the
6 Application?

7 MR. FITZGERALD: I don't have a position
8 one way or the other on that, but I have thought
9 about it a little bit, and it seems to me that
10 we have already accepted changes to the Project.
11 There have been changes since the original
12 Application for undergrounding as mitigation
13 that have been agreed to. So it would seem to
14 me that our further consideration of additional
15 undergrounding would not make this a different
16 Project as opposed to, say, looking at an
17 alternate route. I don't think this is any
18 different than HDD versus jet plow. I don't
19 know that there's a different, that would rise
20 to the level of different project. Again, I'm
21 not espousing an opinion one way or the other.
22 Just whether we can consider this as, consider
23 undergrounding as a mitigation condition rather
24 than as an alternative project.

1 MR. SCHMIDT: I think it may be considered
2 in many ways a separate project. The impacts of
3 the amended portions have already been evaluated
4 by the time they were presented to us. I think
5 there's a potential for environmental impacts,
6 including archeological, that we may not be
7 aware of at this point. So I do kind of think
8 it's sending them back to the drawing board with
9 a lot of unknowns.

10 MR. SHULOCK: Madam Chair, I'd like to, I
11 put this on the table when we were discussing
12 the Durham side of Little Bay. If we're going
13 to -- and I took it off the table because I
14 hadn't asked questions about the environmental
15 impacts or the possibility of actually
16 undergrounding on that area, but if we're going
17 to consider it for Newington I'd also like us to
18 consider it for the views from Little Bay having
19 the Project buried from the shore of Little Bay
20 to the opposite side of Durham Point Road so
21 that that view is protected.

22 MS. DUPREY: I think we need to meet with
23 our counsel to discuss the legal implications of
24 it. So could we have whatever it is that we

1 have a nonmeeting to?

2 PRESIDING OFFICER WEATHERSBY: We can.

3 MS. DUPREY: Okay. After you finish
4 discussing whatever it is.

5 PRESIDING OFFICER WEATHERSBY: Let's just
6 hash it out a little bit more.

7 MS. DUPREY: All right. Thank you.

8 PRESIDING OFFICER WEATHERSBY: Because I
9 agree with everything that's been said. I think
10 that I certainly would prefer it to be
11 underground. It reduces the visual impact, it
12 increases reliability. I mean, I think that
13 undergrounding is the better way to build a
14 line, but that's not what's before us. And if
15 we bury it through Newington, why don't we bury
16 it through all of Durham. You know, it's, why
17 are the Durham Residents subjected to it and
18 Newington isn't.

19 But the more important thing is it does
20 become a different project in my mind. We don't
21 know the environmental impacts. We don't know
22 the historical sites, the archeological
23 resources, the engineering involved. And if we
24 were to require it to be underground, it would

1 have to all be reworked, and it does become a
2 different Project. And personally, as much as I
3 would love for it to be underground, we don't
4 know if they can secure the legal access, the
5 rights-of-way. We already know at least one
6 property owner has refused to give them rights
7 to underground. So I don't think we can, I
8 don't think it would be wise, as much as I would
9 like to, to require more undergrounding of the
10 line. We can talk it some more. We can meet
11 with counsel or we can -- what I'm hearing is
12 folks are inclined to require more
13 undergrounding as mitigation. Mr. Shulock?

14 MR. SHULOCK: As visual mitigation.

15 PRESIDING OFFICER WEATHERSBY: As visual
16 mitigation.

17 MR. WAY: Agreed.

18 PRESIDING OFFICER WEATHERSBY: Is there
19 anyone who wants to pursue this issue further?
20 Okay. Let's move on then.

21 (Discussion with counsel)

22 MR. SHULOCK: So I think all that's left
23 for us to do is to consider the Project as a
24 whole now that we've considered the key viewing

1 points along the entire route to just make a
2 determination whether the entire Project has an
3 unreasonable adverse impact on aesthetics,
4 taking into account the seven factors that we
5 keep in the back of our minds. And we should at
6 least have, I think, a brief discussion of that.

7 And where I started and pretty much where I
8 end is with the agreement of the two visual
9 assessment experts who agreed that typical
10 Project visibility is limited to crossing points
11 on local roads and state highways, a few open
12 areas, and some in parking lots, a short section
13 at the UNH campus, and that visibility is
14 limited due to the extensive tree cover and
15 woodland landscapes in many sections with tree
16 heights typically 55 to 65 feet.

17 So for basically the entire corridor with
18 the exception of the areas that we've discussed
19 and have looked at mitigation for, there is
20 limited visibility of the Project. So I don't
21 think that the Project as a whole causes an
22 unreasonable adverse effect on aesthetics. But
23 I'll open that to discussion. Does anybody
24 disagree?

1 MR. SCHMIDT: I would agree with that.

2 PRESIDING OFFICER WEATHERSBY: I would
3 agree as well, and I just wanted to raise a
4 point. When I go through in my mind the 7
5 factors that we are to consider when making this
6 determination, one of those which I don't think
7 we've touched on is nighttime lighting. Daytime
8 and nighttime lighting. Actually nighttime
9 lighting. Daytime visual impacts and nighttime
10 impacts which would come from lighting. In this
11 Project, as I understand it, there is no
12 nighttime lighting of the towers unlike some
13 other Projects so we hadn't touched on that, I
14 don't think, but there's, even by the airport
15 there's no illumination of the towers that I
16 recall. But I would agree with considering the
17 Project as a whole that this Project does not
18 have an unreasonable adverse effect on
19 aesthetics.

20 MR. SHULOCK: Mr. Way?

21 MR. WAY: I agree as well, looking at the 7
22 criteria, maybe in this case a 7th one,
23 effectiveness of the mitigation measures is
24 going to be a key piece here, but I think as a

1 whole there's not an unreasonable adverse impact
2 from the Project.

3 MR. SHULOCK: So I think we're all in
4 agreement.

5 MR. WAY: Let me just qualify that. At
6 this point, I'm just saying visually.

7 PRESIDING OFFICER WEATHERSBY: Right. No
8 unreasonable adverse effect on aesthetics.

9 MR. WAY: Correct.

10 PRESIDING OFFICER WEATHERSBY: We'll go
11 down the line and make sure everybody agrees.
12 Mr. Fitzgerald?

13 MR. FITZGERALD: Yes.

14 PRESIDING OFFICER WEATHERSBY: Ms. Duprey?

15 MS. DUPREY: Yes.

16 PRESIDING OFFICER WEATHERSBY: Mr. Way is a
17 yes. Mr. Schmidt?

18 MR. SCHMIDT: Yes.

19 PRESIDING OFFICER WEATHERSBY: Mr. Shulock.
20 Yes. Director Muzzey?

21 DIR. MUZZEY: Yes.

22 PRESIDING OFFICER WEATHERSBY: And I do as
23 well. Okay.

24 We are going to move on to considering the

1 effects of the Project on historic sites. Not
2 surprisingly, Director Muzzey is going to lead
3 us.

4 DIR. MUZZEY: So we have talked a bit about
5 historic sites in our consideration of
6 aesthetics, but we will now change gears a bit
7 and look at the Project's effect on historic
8 sites and determine whether or not the Project
9 has an unreasonable adverse effect on historic
10 sites. Based on our rule at 301.14(b), items 1
11 to 5, and I will read those for folks so we can
12 all have an opportunity to change gears in our
13 thoughts.

14 Section 1, we are required to consider all
15 of the historic sites and archeological
16 resources potentially affected by the proposed
17 facility and any anticipated potential adverse
18 effects on such sites and resources.

19 2, the number and significance of any
20 adversely affected historic sites and
21 archeological resources, taking into
22 consideration the size, scale, and nature of the
23 proposed facility.

24 3, the extent, nature, and duration of

1 potential adverse effects on historic sites and
2 archeological resources.

3 4, the findings and determinations by the
4 New Hampshire Division of Historical Resources
5 of the department of cultural resources, and if
6 applicable, the lead federal agency, of the
7 proposed facility's effects on historic sites as
8 determined under Section 106 of the National
9 Historic Preservation Act, US Code Part 306108
10 or RSA 227-C:9; and

11 5, the effectiveness of the measures
12 proposed by the Applicant to avoid, minimize, or
13 mitigate unreasonable adverse effects on
14 historic sites and archeological resources, and
15 the extent to which such measures represent best
16 practical measures.

17 So also informing our discussions of this
18 area is the definition of historic site, and we
19 did touch on that with our aesthetic
20 discussions, but I will just remind everyone
21 that that's defined in the SEC's rules at
22 102.23, and that's defined as, quote, historic
23 property, unquote, is defined in RSA 227-C:16,
24 namely, quote, any building, structure, object,

1 district, area, or site that is significant in
2 the history, architecture, archeology, or
3 culture of this state, its communities or the
4 nation, unquote. This term includes, quote, any
5 prehistoric or historic district, site,
6 building, structure, or object included in or
7 eligible for inclusion in the National Register
8 of Historic Places maintained by the Secretary
9 of the Interior, pursuant to 36 CFR Part 800.16,
10 1, L1.

11 We had a great deal of material submitted
12 to assist in our deliberations on historic
13 sites. These include both the Application
14 materials, various archeological reports
15 prepared by a qualified consultant on behalf of
16 the Applicant. Considering what we call
17 aboveground resources we also had reports on,
18 that looked over the entire project area and
19 then were detailed, what the DHR referred to as
20 inventory and district area forms. We also had
21 a list of various communications between the
22 Applicant and the DHR. Also at -- I'm not sure
23 of the Appendix number at the moment, but the
24 Effects Tables that were submitted that analyzed

1 whether identified historic properties were
2 affected and if so, how and were those effects
3 adverse. I should note that the archeological
4 reports that I just referred to are in the
5 confidential section of the Application given
6 that the locations of archeological sites are
7 protected under state and federal law.

8 MR. IACOPINO: The Effects Tables were
9 Applicant's 164.

10 DIR. MUZZEY: Thank you. I'll make a note.
11 We also had testimony from experts on behalf of
12 the Applicant both from an aboveground and a
13 below ground perspective and correspondence as
14 well as the MOU and MOA stipulating mitigation
15 agreements between the DHR, the Applicant and
16 the US Army Corps of Engineers.

17 Other parties have weighed in as to their
18 thoughts on historic sites as well including
19 Counsel for the Public. Counsel for the Public
20 Exhibit 5 A is an assessment of aboveground
21 historic sites prepared by a consultant, Ms.
22 O'Donnell.

23 We also have testimony on behalf of the
24 Town of Newington, testimony on reports by the

1 Durham Historic Association which I'll point out
2 is a, Durham Historic Association is an
3 organization. It's a nonprofit organization.
4 It is not part of town government.

5 We also had individual Intervenors speak in
6 regard to historic resources, and I believe
7 that's the end of what I had gathered.

8 I guess I have a question for the Committee
9 as to what would be the most helpful way to
10 proceed through this area of historic sites. We
11 could discuss what the Applicant's findings were
12 and how that compares to some of the comments
13 by, in particular, DHA and Counsel for the
14 Public's consultant or we could focus on the
15 Applicant's materials and then move to some of
16 the issues raised by others. Is there a
17 preference?

18 MS. DUPREY: I have found this area highly
19 confusing so I really appreciate that we have
20 such an expert leading us through this today.

21 Getting some feeling for the differences
22 between Ms. O'Donnell's view of what should be
23 considered as compared to the Applicant's
24 experts would be useful to me, and how the DHR

1 played into that, and I wonder if we could lead
2 off perhaps with DHR's review and just get a
3 solid footing as to their view, but I'm open to
4 anything else, but I'd really like to have a
5 feeling for DHR's view.

6 PRESIDING OFFICER WEATHERSBY: I also don't
7 want us to forget about archeological properties
8 and that's a smaller nugget to crack so we can
9 either do it first or last, but I just don't
10 want it to get lost.

11 MR. FITZGERALD: After this morning's
12 previous deliberation on aesthetics, it's kind
13 of occurred to me, I thought about doing this
14 with the environmental section, I wonder if it's
15 helpful to start to look at the stipulations
16 that have been agreed to because I think going
17 through a lot of this in great detail and then
18 looking at the stipulations and saying oh, well
19 they agreed to take care of all of this. I'm
20 wondering if that's a helpful approach, that we
21 at least review the stipulations and understand
22 them before we go into great detail stone wall
23 by stone wall.

24 DIR. MUZZEY: Are you referring to the

1 stipulations in the MOA and the MOU or any of
2 the conditions that have been placed or
3 suggested to be placed by Counsel for the Public
4 and the Applicant?

5 MR. FITZGERALD: The stipulations between
6 CFP and the Applicant which I think reference
7 the MOU and other documents.

8 PRESIDING OFFICER WEATHERSBY: I think that
9 would be a good place to start as well just to
10 kind of understand what issues have been
11 resolved at least between those two parties.
12 There are some stipulated facts and I think one
13 stipulated condition regarding historic sites.
14 So the stipulated facts --

15 MR. IACOPINO: 193 is the proposed
16 conditions. 194 is the amended stipulated
17 facts. I think it's 184.

18 PRESIDING OFFICER WEATHERSBY: So 184 is
19 the stipulated facts concerning historic sites.
20 There's three of them; 13, 14 and 15. That's
21 the New Hampshire Division of Historical
22 Resources/State Historic Preservation Office.
23 DHR/SHPO staff have reviewed archeological
24 studies and determined that the project will not

1 affect any significant archeological sites.
2 That comes from DHR's Final Report dated August
3 1, 2017.

4 Stipulated fact number 14, DHR/SHPO have
5 concluded that the Project may result in adverse
6 effect at four historic sites including Alfred
7 Pickering Farm, Durham Point Historic District,
8 Little Bay Underwater Cable Terminal Houses
9 Historic District and the Newmarket and Bennett
10 Road Farms Historic District. That's from that
11 same report of DHR.

12 And number 15, that the Applicant agrees to
13 comply with DHR/SHPO's requested conditions as
14 outlined on page 3 of DHR's final report dated
15 August 1, 2017.

16 MS. DUPREY: I'm sorry, Madam Chair. Could
17 you give us that exhibit reference again?

18 MR. IACOPINO: 184.

19 MS. DUPREY: Thank you.

20 MR. IACOPINO: Applicant's 184.

21 PRESIDING OFFICER WEATHERSBY: Those are
22 the facts that are agreed upon between the
23 Applicant and Counsel for the Public. They do
24 have one stipulated condition which is in

1 Applicant's Exhibit 193. It's number 8. It
2 pertains to a number of things, but it does
3 pertain to archeological and historic sites and
4 concerns the BMPs. I'll read the parts that are
5 relevant for us today.

6 Further ordered that prior to any
7 construction activity the Applicant shall file
8 with the New Hampshire Site Evaluation Committee
9 a copy of all Best Management Practices to be
10 utilized for the Project. I'm skipping ahead.
11 And Best Management Practices for work near
12 archeological and historic sites. During
13 construction the Applicant shall adhere to the
14 BMPs consistent with all state and federal
15 permit requirements.

16 I think those are the only stipulated facts
17 and stipulated conditions.

18 MR. FITZGERALD: Where was that condition
19 in 193?

20 PRESIDING OFFICER WEATHERSBY: Number 8.
21 There have been -- as Director Muzzey was
22 saying, there have been some agreements reached
23 concerning -- there's a draft MOU with Durham
24 which I understand has been finalized, but I

1 don't think it's part of this record so we have
2 two versions of that, and that's 197 and 270.
3 One was one that Eversource proposed to Durham
4 and one I understand was Durham proposing to
5 Eversource, and those lay out treating historic
6 resources in the Town of Durham, particularly
7 stone walls and cellars.

8 I think the more comprehensive one is
9 Exhibit number 270. 270 is signed by
10 Eversource, correct?

11 MR. IACOPINO: Also signed by Durham.

12 PRESIDING OFFICER WEATHERSBY: Signed by
13 both?

14 MR. FITZGERALD: Madam Chair, I have a
15 question.

16 PRESIDING OFFICER WEATHERSBY: Yes, Mr.
17 Fitzgerald.

18 MR. FITZGERALD: With regards to
19 stipulation number 8 that you read, and then
20 going further to stipulation number 9 which says
21 further ordered the Applicant shall comply with
22 all terms and conditions of all memoranda ever
23 understanding entered into between the Applicant
24 and host communities or other entities, am I

1 correct in reading that that that would include
2 the MOA and MOU or whatever the terms are that
3 govern the historic sites?

4 DIR. MUZZEY: That's my understanding as
5 well.

6 MR. FITZGERALD: Okay. I mean, really what
7 I wanted to make sure was that those are
8 considered as conditions in our certificate.

9 PRESIDING OFFICER WEATHERSBY: I would
10 agree with that. So the MOU with Durham, the
11 final one is Exhibit 270 and it is signed by
12 both parties. I didn't go far enough. So that
13 is a Final MOU between Eversource and Durham,
14 Town of Durham. I am not going to read the
15 whole thing. Take a look at it. But it deals
16 with historic properties in the town.
17 Unanticipated discoveries, notice to various
18 parties, treatment to stone walls. They've
19 agreed to conduct ground penetrating radar of
20 the Samuel Hill Family Burial Site. That was a
21 concern of Durham Historic Association.
22 Expanding the quarry sensitive area boundary to
23 include the granite quarrymen's granite slab
24 bench. Another issue of the Durham Historic

1 Association. Timber matting, et cetera. There
2 was an MOU with the Town of Newington, but as I
3 recall it does not deal with historic
4 properties. Maybe, Director Muzzey, you could
5 tell us a little bit about the MOU with DHR and
6 MOA.

7 DIR. MUZZEY: I do want to offer a slight
8 correction to what I think I said to Mr.
9 Fitzgerald with his questions about the MOU and
10 the MOA. If we look at exhibit, I believe it's
11 Applicant Exhibit 193 where the Applicant makes
12 a number of commitments that relate to a number
13 of different areas with this Project, I cannot
14 find in that particular exhibit where the
15 Applicant commits to the conditions of the
16 Memorandum of Agreement between the DHR and the
17 US Army Corps of Engineers. I think it's
18 covered elsewhere in the many, many conditions
19 that have been proposed for this Project, but I
20 don't know that it's in that particular exhibit,
21 and I believe that's the one you were referring
22 to.

23 MR. FITZGERALD: Well, I was referring to
24 specifically paragraph 9 which says that they

1 shall comply with all terms and conditions of
2 all memoranda of understanding entered into
3 between the Applicant and host communities or
4 other entities. So I'm sort of assuming that
5 other entities means any other MOA that they've
6 or MOU they've entered into and -- because this
7 document is what is being proposed as
8 conditions.

9 DIR. MUZZEY: Yes.

10 MR. FITZGERALD: Unless we otherwise
11 reference those somewhere in the conditions.

12 MS. DUPREY: I think it's great to do this,
13 but they're obligated. They entered into a
14 contract. This, I guess, puts the overlay of
15 the SEC in it, and so it's worthwhile but that,
16 Applicant's obligated to live up to its
17 contractual --

18 DIR. MUZZEY: People may argue as to
19 whether or not a Memorandum of Understanding or
20 Agreement constitutes a contract. That is
21 certainly not my area of expertise, but in order
22 to answer this question to the best of my
23 ability, Condition number 9 addresses Memoranda
24 of Understanding. That is one title for one

1 type of document. We also have mitigation
2 stipulations in a document that's called a
3 Memorandum of Agreement. Agreement versus
4 Understanding.

5 The DHR has asked the Site Evaluation
6 Committee to include four conditions. We can
7 get to those, but for now I can tell you it
8 includes conditioning the certificate upon the
9 completion of the mitigation stipulations in the
10 Memorandum of Agreement. So even though that's
11 not specifically stated in 9, I believe it is
12 covered elsewhere.

13 PRESIDING OFFICER WEATHERSBY: So maybe
14 let's circle back to potential conditions after
15 we have a better handle on the effects on
16 historic sites. But it's an important concept.
17 We don't want to lose it, but maybe once we know
18 more about impacts on historic and archeological
19 sites, we can address proposed conditions and
20 mitigation.

21 DIR. MUZZEY: Sounds great. So I will
22 start with a quick overview of what the Division
23 of Historic Resources review was and how that
24 contributes to the deliberation of the Site

1 Evaluation Committee. Please jump in if you
2 have questions. I'll try to summarize things in
3 order to be cognizant of the time.

4 So the Division of Historical Resources is
5 a State Historic Preservation Office in the
6 State of New Hampshire, and as the State
7 Historic Preservation Office, it has a series of
8 federal duties that have been assigned to it via
9 the National Park Service, and one of those is
10 consulting with lead federal agencies to
11 determine whether the agencies' undertakings and
12 in this case of 106 it's whether a Project has
13 federal funding, licensing or permitting to
14 determine whether those projects have any
15 adverse effects to the historic sites, historic
16 properties and if effects are adverse, can they
17 be avoided, minimized, or mitigated. So the DHR
18 feeds into our review by the Site Evaluation
19 Committee to make those determinations with the
20 lead federal agency.

21 I think it's important to note that the
22 Section 106 review potentially results in a
23 finding of adverse effect. That differs and the
24 criteria which feed into it differ from the

1 SEC's finding of unreasonable adverse effects,
2 and we can get into those. I had read those at
3 the start of my comments, and we can get into
4 those as needed as we continue.

5 The lead federal agency for this Project is
6 the US Army Corps of Engineers. They are
7 supplying a Wetland Permit which is considered a
8 federal undertaking for the project and so the
9 DHR has been working with the US Army Corps of
10 Engineers on that review.

11 The first step in the 106 process is to
12 establish the undertaking and part of that is
13 determining the Area of Potential Effect, and
14 this is one area where the Counsel for the
15 Public's consultant, Ms. O'Donnell, had very
16 different opinions than the Division of
17 Historical Resources.

18 The US Army Corps of Engineers and the DHR
19 agreed on an Area of Potential Effect of a half
20 mile on either side of the corridor, and within
21 that larger discussion of the half-mile
22 corridor, half mile on either side of the
23 corridor is a discussion of indirect and direct
24 impacts.

1 Indirect impacts can seem similar to what
2 we did with our aesthetic analysis. In
3 particular, what is the visual impact of the
4 Project on historical resources. The direct
5 impact refers to the actual construction of the
6 Project. Ground disturbing activities, do
7 historic structures need to be taken down, a
8 whole variety of potential direct adverse
9 effects either due to the construction of the
10 Project or anticipated effects in the near
11 future.

12 MR. WAY: Question?

13 DIR. MUZZEY: Yes.

14 MR. WAY: In terms of the half mile
15 footprint determined by Army Corps and DHR, how
16 exactly is that determined? Is that consistent
17 with other projects that we have done in the
18 past. Is that standard?

19 DIR. MUZZEY: The APE is not standard
20 because it's based on the anticipated effects of
21 the Project, and of course with each project
22 those effects could be very different. The
23 Division of Historical Resources reviews about a
24 thousand projects a year under Section 106.

1 Those are very varied. Everything from an
2 agency using housing money to replace a furnace
3 in a historic building to the construction of a
4 large transportation project or the construction
5 of a new transmission line. So, obviously, the
6 Area of Potential Effect is determined on a
7 project by project basis.

8 The Division does have guidance published
9 on its website as to how projects are reviewed
10 that are similar to transmission projects,
11 things such as wind farms and telecommunications
12 towers. And if we look at in particular the
13 communications towers, the guidance, the
14 starting point for determining an appropriate
15 Area of Potential Effect for telecommunication
16 towers that are 199 feet or less, the suggested
17 Area of Potential Effect is a half-mile
18 circumference around the tower.

19 Now, obviously, this Project is different
20 because we have a series of towers and so the
21 Area of Potential Effect rather than being
22 perfectly circular is more of a long snake
23 extending a half mile. Recognizing that
24 telecommunication towers can be taller for 19

1 feet or more, the suggested Area of Potential
2 Effect is one mile because if something is
3 taller, it's anticipated the effects could be
4 larger.

5 If we move to wind farms, there's also
6 guidance, and the suggested starting point for
7 wind farms is a 3-mile Area of Potential Effect,
8 recognizing that turbines can be even larger,
9 potentially 4 or 500 feet tall. So, again, it's
10 a responsive judgment based on the anticipated
11 effects of the Project.

12 MR. WAY: Couple quick questions. In
13 working with the Army Corps of Engineers, they
14 come up or you agree on that distance. Is that
15 distance, that area, set by the guidance for
16 DHR? Is it also set by Army Corps? Do you then
17 agree? Do they have their own separate guidance
18 or do they defer to the state entity for that
19 area of effect?

20 DIR. MUZZEY: I'm not familiar with any
21 published guidance by the Army Corps of
22 Engineers regarding Area of Potential Effect.

23 MR. WAY: That would sound they'll defer to
24 you.

1 DIR. MUZZEY: I wouldn't characterize it
2 that way either.

3 MR. WAY: Okay.

4 DIR. MUZZEY: There is an independent
5 federal agency that is in charge of
6 administering the Section 106 review process,
7 and that entity is called the Advisory Council
8 on Historic Preservation, and they are the
9 entity that typically sets guidance documents as
10 to what are appropriate ways to implement
11 Section 106 reviews as well as working with
12 individual federal agencies to determine the
13 best way to address typical projects for that
14 agency.

15 For example, those distances that I gave
16 you for telecommunication towers is based on
17 consultation between the Advisory Council and
18 the FCC which is usually the lead federal agency
19 for that type of Project, and they have
20 determined those APE guidelines based on an
21 agreement they have and their experience with
22 typical telecommunications towers.

23 MR. WAY: Very good.

24 PRESIDING OFFICER WEATHERSBY: Director

1 Muzzey? You can answer this now or defer it
2 until later, but I think it would be
3 interesting. You've been describing process so
4 far for the 106 process, but how the
5 identification for the APE for the 106 process
6 is the same or different than the identification
7 of the APE under SEC rules.

8 DIR. MUZZEY: The SEC rules, and I don't
9 have the citation in front of me, do define the
10 Area of Potential Effect as being, as the
11 federal definition under 36 CFR 800 as to what
12 an Area of Potential Effect was. I believe that
13 rule was put in place and I was on the Committee
14 that considered that due to the fact that the
15 vast, vast majority of SEC Projects are also
16 reviewed under Section 106.

17 MS. DUPREY: Could you give that cite? I'm
18 sorry? Someone was asking me a question.

19 PRESIDING OFFICER WEATHERSBY: Our Site
20 Rule is 301.06. It indicates that the
21 Application must include identification of all
22 historic and archeological sites within an Area
23 of Potential Effects as defined in 36 CFR
24 800.16(d). And 800.16(d) defines Area of

1 Potential Effects as the geographic area or
2 areas within which an undertaking may directly
3 or indirectly cause alterations in the character
4 or use of historic properties and goes on about
5 the scale and nature of the undertaking.

6 MS. DUPREY: So it's something of a
7 subjective standard. There's no number in
8 there. Okay. Thanks.

9 PRESIDING OFFICER WEATHERSBY: Correct.

10 DIR. MUZZEY: I think it's helpful to read
11 that second.

12 PRESIDING OFFICER WEATHERSBY: So another
13 section, 36 CFR 800.4, concerning the
14 identification of historic properties, it
15 indicates that, second part of 16?

16 DIR. MUZZEY: Yes.

17 PRESIDING OFFICER WEATHERSBY: The second
18 part of 16(d) which I was reading, the Area of
19 Potential Effects is influenced by the scale and
20 nature of an undertaking and may be different
21 for different kinds of effects caused by the
22 undertaking.

23 MS. DUPREY: So that would relate back to
24 sort of the standards that you set in the DHR

1 for different kinds of towers?

2 DIR. MUZZEY: Not only, the standard set by
3 federal agencies and the Advisory Council on
4 Historic Preservation.

5 PRESIDING OFFICER WEATHERSBY: So what I
6 take from this is that our rules basically say
7 it's up to DHR to set the Area of Potential
8 Effects as it relates to historic properties.
9 SEC rules kind of mirror the 106 rules in as far
10 as determining APE. Is that a correct
11 understanding?

12 DIR. MUZZEY: Well, it was a point of
13 discussion among some of the Intervenors and
14 Counsel for the Public who felt that although
15 the Site Evaluation Committee adopted the
16 federal definition of Area of Potential Effect
17 that did not mean that the Site Evaluation
18 Committee had to adopt individual findings of
19 what an APE is for a Project before the
20 Committee. Did I make the difference clear
21 there?

22 PRESIDING OFFICER WEATHERSBY: No. Could
23 you state that again? You lost me.

24 MR. WAY: No.

1 DIR. MUZZEY: So what some Intervenors and
2 the consultant for the Counsel for the Public
3 have argued is that although the Site Evaluation
4 Committee has adopted the federal definition of
5 Area of Potential Effect, that doesn't mean for
6 an individual Project and its review before a
7 Subcommittee that the Subcommittee needs to
8 adopt the APE as defined by the federal agency
9 and SHPO for that individual project.

10 PRESIDING OFFICER WEATHERSBY: I was
11 wrestling with that and maybe we want to hash
12 this out now because our rules say the Area of
13 Potential Effects shall be as defined in the
14 federal rules.

15 MR. WAY: Where are you looking?

16 PRESIDING OFFICER WEATHERSBY: 301.06. Our
17 rules 301.06.

18 MS. DUPREY: Are you looking at subsection
19 A?

20 PRESIDING OFFICER WEATHERSBY: I'd have to
21 pull it up.

22 MR. SCHMIDT: Yes.

23 MR. WAY: Yes.

24 PRESIDING OFFICER WEATHERSBY: Also Section

1 B of that rule.

2 MR. WAY: So make sure I understand. I
3 have much more appreciation for what you do now.
4 Demonstration of the project review proposed
5 facility as being initiated for purposes of
6 compliance with Section 106 of the National
7 Historic Preservation Act.

8 That to me says that, as I think the Chair
9 suggests, that it adopts the APE that comes out
10 of that process in conjunction with DHR. That's
11 my reading of it. Is that your reading?

12 DIR. MUZZEY: My reading of both A and B
13 together, I have always assumed that would be
14 the case, and it has been the case in previous
15 SEC proceedings.

16 MR. WAY: That was my next question.

17 DIR. MUZZEY: As far as I know that has
18 been the case in previous proceedings. I think
19 it's interesting to think about the idea of
20 whether or not the SEC should adopt a different
21 APE than the lead federal agency and the SHPO on
22 any given Project, although I would recognize
23 that the SEC has very limited experience in
24 defining appropriate Area of Potential Effects

1 for historical resources review, and it would be
2 surprising to me if it didn't rely on the
3 findings of federal agencies and State Historic
4 Preservation Offices which do that as a matter
5 of course.

6 MR. WAY: That's what I'm thinking about.
7 I mean, even if the SEC wanted to adopt a
8 different APE than what's being proposed by DHR
9 and the feds, I'm not sure how we would do that.
10 And maybe I'm looking down at counsel as well.

11 MR. IACOPINO: I think that if any, I think
12 the SEC can only make decisions like that when
13 they meet and meet in public. In order to do
14 that, you would have to have some kind of
15 separate proceeding before you begin your
16 adjudicative process to notify the Applicant and
17 the parties what the APE is going to be; and as
18 a practical matter, much of this historic
19 resource research starts in many cases years
20 before there's even an application pending.

21 So that's the practical problem. And the
22 legal problem is one of Due Process. The
23 Applicant has to know before they, before you,
24 at least before an adjudicative hearing what the

1 APE is, and they obviously will then have to
2 address the historic resources within that APE
3 prior to an adjudicative hearing at least.
4 Obviously, I think the Committee would prefer
5 that they do it before they even file the
6 application. So it would be very difficult for
7 the Site Evaluation Committee to establish on a
8 case-by-case basis the APE for future applicants
9 because you don't know what the effects of their
10 Project may be which is why traditionally we've
11 always relied upon the DHR to tell us what the
12 APE is or should be.

13 MR. WAY: That's helpful, and once again,
14 just so I understand as I go down this rabbit
15 hole, and you said in the future, but I'm also
16 thinking now in the past, what we've been
17 working with. If the understanding at the start
18 of this process and precedent set by previous
19 cases was that the APE was going to be set by
20 the DHR in the 106 process, and it's half a
21 mile, and in the course of the hearings someone
22 says no, it should be greater than half a mile.
23 My understanding that would have been decided
24 amongst us as a body as you said before those

1 proceedings or early on.

2 MR. IACOPINO: I would say yes because you
3 have to give notice to the parties. It's a due
4 process consideration.

5 MR. WAY: So in my mind whatever arguments
6 we have, that seems to put that argument aside.

7 MR. IACOPINO: Unless you feel that based
8 on the evidence that's provided to you there is
9 still an unreasonable adverse impact on historic
10 resources, you can still consider that with
11 other evidence as well. Doesn't have to be just
12 what DHR says. If you're persuaded by other
13 evidence that comes before you that there is an
14 unreasonable adverse impact, then you should
15 find that. The 301.06 is what should be
16 included in the Application. 305.14 is your
17 considerations. The 7 that were referenced
18 earlier.

19 MS. DUPREY: 301.05.

20 MR. WAY: 301.05 14(b).

21 MR. IACOPINO: So under that you are to
22 consider the historic sites and archeological
23 resources potentially affected by the proposed
24 facility, and then it goes on for five different

1 measures.

2 MS. DUPREY: That's the wrong citation.

3 PRESIDING OFFICER WEATHERSBY: 301.14(b).

4 DIR. MUZZEY: Those are the five items I
5 read at the start of our discussion of historic
6 sites.

7 PRESIDING OFFICER WEATHERSBY: So Attorney
8 Iacopino, I have to put you on the spot a little
9 bit. It sounds as though this Committee does
10 not need to reach a decision on to the
11 reasonableness or the acceptability of the APE
12 as set by SHPO or as provided by the, the
13 assessment based on that provided by the
14 Applicant. We don't have to rule on the APE,
15 whether the APE was correct or not. We just
16 decide based on the information that has been
17 provided to us by all parties whether, the big
18 question about the effect on historic sites.

19 MR. IACOPINO: That's correct.

20 DIR. MUZZEY: And I believe that relates to
21 Section 1, the Subcommittee needs to consider
22 whether all the historic sites and archeological
23 resources potentially affected by the Project
24 were considered, and that's to an degree where

1 APE comes in because some have argued that there
2 are historic sites beyond the established
3 half-mile APE that were not considered.

4 PRESIDING OFFICER WEATHERSBY: Right. When
5 we go back to Mr. Raphael's analysis, there was
6 very little outside of the half mile on either
7 side that even had visibility of the Project,
8 but we can get into that later.

9 DIR. MUZZEY: Yes. I do want to point out
10 an additional aspect of the Section 106 review
11 process, and that is an entity called Consulting
12 Parties are also encouraged to contribute to the
13 views of the lead federal agency and the State
14 Historic Preservation Office. Some people have
15 compared the role of Consulting Parties to the
16 Intervenor status of the SEC process, although I
17 see differences in them because, again, I spend
18 a great deal of time working with Section 106
19 Projects.

20 Consulting Parties are encouraged to, first
21 of all, Consulting Parties are established by
22 interested parties communicate with the lead
23 federal agency and ask to have Consulting Party
24 status. If a Consulting Party is granted that

1 status, they are asked to provide their views
2 and participate in various steps of the Section
3 106 process, and it's incumbent upon the lead
4 federal agency and the SHPO to consider those
5 views at each of the decision points of the
6 process.

7 There are Consulting Parties that signed up
8 for the 106 review of this Project, and their
9 views were considered by both the lead federal
10 agency and the SHPO. For instance, if a
11 Consulting Party raised a concern about the Area
12 of Potential Effect, their views would have been
13 considered by both the lead federal agency and
14 the SHPO, and so you could know that it's not
15 just a case of the federal agency and the SHPO
16 saying well, this is the way it's going to be.
17 Consulting Parties can consult, and they can
18 also appeal to that group I mentioned earlier,
19 the Advisory Council on Historic Preservation.

20 MR. WAY: I apologize if this is in the
21 exhibits and I didn't see it, but in terms of
22 the Consulting Parties, and you mentioned that
23 this is similar to an Intervenor-type process,
24 were any the Consulting Parties Intervenors in

1 this process?

2 DIR. MUZZEY: Both the Town of Newington
3 and the Town of Durham are assumed to be
4 Consulting Parties under the regulations given
5 that the Project occurs within their boundaries
6 and then Helen Frink as well.

7 MR. WAY: So when you say assume, to me
8 that says not active.

9 DIR. MUZZEY: It's incumbent upon the
10 Consulting Party as to how active they want to
11 be. The Applicant is also a Consulting Party to
12 the --

13 MR. WAY: I'm just trying to get a sense of
14 how engaged people were in this Consulting Party
15 piece and whether the APE came up during that
16 discussion or any discussions.

17 PRESIDING OFFICER WEATHERSBY: Director
18 Muzzey, am I correct that you were not involved
19 in the 106 process for this Project?

20 MR. WAY: That's a good point. Yes. I
21 forget that. You're right.

22 DIR. MUZZEY: So I'm sorry I can't answer
23 that specific question. I can certainly speak
24 in generalities about the Section 106 process

1 until the cows come home.

2 MR. WAY: No, I withdraw the question.

3 MS. DUPREY: I think that the, some of the
4 Consulting Parties offered evidence through
5 cross-examination that they felt that they
6 hadn't really had their opinions solicited, that
7 they had more or less been left behind, and I
8 think as I'm listening to you that it's perhaps
9 like the ISO process which we also had people
10 feel like they were left behind in that it's
11 incumbent on the party themselves to stay active
12 in it and not to wait to be asked I guess if you
13 will. Can you just talk a little bit about how
14 the Consulting Parties know what's going on? I
15 mean even in this case, I'm not sure if they
16 were asked to sign the MOU and MOA.

17 MR. FITZGERALD: I was going to -- just so
18 that you can do it all at once, the MOU and MOA
19 I think it was Mrs. Frink that testified that
20 she never saw those before they came out so if
21 you could just clarify the role of the
22 Consulting Parties. It was my understanding
23 that their views were taken into account, but
24 when it came time to write the MOA they weren't

1 a party to the MOA, and they weren't a party to
2 its actual development.

3 DIR. MUZZEY: I have to add a complicating
4 factor to that. I can say in general it's
5 always best practice for the Consulting Parties
6 to be as active as possible, and it's encouraged
7 by the regulations and the Advisory Council. If
8 you do a word search on Consulting Parties
9 through the federal regs, they appear a great
10 deal. It's incumbent upon the lead federal
11 agency to engage the Consulting Parties. And so
12 typically what we would see is the US Army Corps
13 of Engineers or any other lead federal party
14 making sure that the Consulting Parties were
15 invited to meetings, site visits, that type of
16 thing.

17 The complicating issue that we also need to
18 understand and partly explains why we have two
19 mitigation agreements for historical resources
20 is that as the US Corps of Engineers looks at
21 projects, they consider their permit areas
22 within the Area of Potential Effect as the areas
23 subject to Section 106 reviews. They have for
24 decades argued with the Advisory Council on

1 Historic Preservation on this issue, and there's
2 been no conclusion as to how the US Army Corps
3 of Engineers should handle this issue.

4 For this Project, the Army Corps only took
5 jurisdiction of certain areas within the APE.
6 However, we do have a New Hampshire state law at
7 RSA 227-C:9 which instructs all state agencies
8 to cooperate with the Division of Historical
9 Resources in order to assess the impacts of
10 their Projects and to provide mitigation, if
11 necessary, for adverse effects. And so the rest
12 of the Area of Potential Effect falls under the
13 review of the DHR under 227-C:9.

14 So under Section 106 we have mitigation
15 documents that are called Memorandum of
16 Agreements. Under 227-C:9 we have mitigation
17 agreements that are called Memorandums of
18 Understanding. So that's why we have really two
19 areas of jurisdiction as well as two different
20 mitigation agreements.

21 Under 227-C:9 there is no provision for
22 Consulting Party status. So although it would
23 be good practice to make sure the interested
24 parties are involved, it's incumbent upon the

1 interested parties, as Ms. Duprey said, to make
2 sure they are involved as well.

3 As our Chair alluded to, I was not involved
4 in the daily review of this Project either under
5 106 or state law so I'm afraid I can't give you
6 detailed information as to who notified whom and
7 how that unfolded.

8 So would folks like to look now at the
9 historic properties that were identified within
10 our Area of Potential Effect?

11 To summarize, the Applicant began its
12 responsibilities under 106 and 227:C-9 by
13 completing what was called a Project Area Form
14 for aboveground resources. This type of
15 document looks at the entire Area of Potential
16 Effect, what are the important historic trends
17 in that area, what is its basic historical
18 background, what resources exist today, what had
19 already been both identified and evaluated as a
20 historic resource, what had been listed to the
21 National Register, those types of designations,
22 and then based on the history and built
23 environment, built and natural environment, what
24 are the suggestions for additional

1 identification and evaluation of historic
2 resources from an aboveground perspective within
3 the Project area.

4 Coming out of that, as I mentioned earlier,
5 the Applicant completed what's called Individual
6 Inventory Forms as well as Historic District
7 Area Forms to consider the areas and properties
8 recommended for further survey to determine
9 whether or not they met the definition of
10 historic for the 106 and 227-C:9 reviews, and
11 the standard for what is considered historic for
12 those types of reviews is whether or not the
13 Project would be eligible for listing on the
14 National Register of Historic Places.

15 National Register has been around since
16 1966 and its criteria are well-established and
17 well used within the field of historic
18 preservation.

19 Coming out of that review, the DHR and as
20 appropriate the US Army Corps of Engineers
21 agreed on what historic resources existed within
22 the Project area, and I can give you a summary
23 of those if I fiddle with some paperwork here.

24 All right. I don't have that list off the

1 top of my head, and I hate to have everyone just
2 sit here and fiddle while I fiddle.

3 MR. IACOPINO: Applicant's Exhibit 265, DHR
4 List of Potentially Eligible Resources?

5 DIR. MUZZEY: No. I think what I might, a
6 more useful exhibit to look at might be the
7 Effects Tables, and Mike, you had that number
8 for us? I have a paper copy.

9 PRESIDING OFFICER WEATHERSBY: I think it's
10 Applicant's Exhibit 164.

11 DIR. MUZZEY: Yes. Thank you. So the list
12 of these resources are Little Bay Underwater
13 Cable Terminal Houses Historic District in
14 Durham and Newington. The Alfred Pickering Farm
15 on Little Bay Road in Newington.

16 PRESIDING OFFICER WEATHERSBY: Director
17 Muzzy, I'm going to stop you for a second
18 because 164 has a lot more properties. Starts
19 with Adams Homestead, goes on and on.

20 DIR. MUZZEY: It's just in a different
21 order than I'm giving you. Sorry.

22 MR. WAY: Director Muzzey, could you start
23 again to the first one?

24 DIR. MUZZEY: Why don't we go by exhibit,

1 the exhibit, since that's what you folks have.

2 MR. WAY: Thank you.

3 DIR. MUZZEY: I'm waiting for my computer
4 to boot up again. So Exhibit 164, the Historic
5 Properties Effects Tables. So what these tables
6 are used for is to assess the identified
7 historic properties, the aboveground historic
8 properties -- we're not going to forget the
9 archeology, but right now we're talking about
10 aboveground properties -- to assess whether or
11 not they could potentially be affected by the
12 Project and if they could potentially be
13 affected is that effect adverse.

14 So let's go in the order that Exhibit 164
15 goes in. And it begins with the Adams Homestead
16 at 148 Nimble Hill Road in Newington. So to
17 give you just a brief rundown of how these
18 tables are laid out, they begin with the
19 significance of the property. Where the
20 property begins and ends. That's the NR
21 boundary section.

22 MR. FITZGERALD: Director Muzzey? Who
23 prepares these tables?

24 DIR. MUZZEY: These tables were prepared by

1 the Applicant and then reviewed by the Division
2 of Historic Resources and the Army Corps of
3 Engineers.

4 MR. FITZGERALD: Okay.

5 DIR. MUZZEY: Page 2, and I'm not going to
6 do this with each of the properties or we'll be
7 here a long time. But page 2 of the table
8 continues with a definition of effect as it's
9 laid out in 36 CFR 800. If the recommended
10 finding is that a historic property is affected,
11 the table continues, as it does with the Adams
12 Homestead, on PDF page 3 laying out what the
13 criteria of adverse effect are and evaluating
14 whether the individual Project's effects meet
15 those adverse criteria.

16 And if you go to the bottom of page 4 you
17 can see the recommended finding which was
18 concurred with by the DHR and the Corps that the
19 proposed Project will not have an adverse visual
20 effect on the Adams Homestead. The Adams
21 Homestead was not directly affected by
22 construction or operation of the Project, but it
23 did have the indirect visual effect. And so the
24 106, 227-C:9 finding on the Adams Homestead is

1 no adverse effect.

2 The tables continue with some visuals that
3 assist the reader as well as the agencies in
4 those determinations looking at both where the
5 historic property's boundaries are, and then as
6 that compares to the Project's potential
7 impacts, and interesting that this Project is
8 first because it does, it is near the area of
9 Nimble Hill Road that we were discussing
10 earlier.

11 The second project is the Alfred Pickering
12 Farm on Little Bay Road in Newington. Again, we
13 start with the reasons why the property is
14 considered historic, what the boundary is, and
15 then its relationship to the proposed action.
16 In this case the finding was that this property
17 would be affected and so then we need to again
18 go through the criteria of adverse effect, and
19 the conclusion in this case was that there is an
20 adverse effect to the Alfred Pickering Farm.
21 The project will alter its setting and feeling,
22 the feeling of the open agricultural land that
23 is characteristic and qualifies it for listing
24 on the National Register of Historic Places, and

1 therefore, we would be looking at first could we
2 avoid that impact, could we minimize it, and if
3 not, is mitigation needed.

4 In the case of the Alfred Pickering Farm,
5 although there was discussion of undergrounding,
6 the owners were not amenable to that, and so
7 when we get to our discussion of the MOAs and
8 the MOU we'll see discussion of mitigation for
9 this property.

10 MR. FITZGERALD: Can I ask another
11 question?

12 DIR. MUZZEY: Sure.

13 MR. FITZGERALD: How do you relate the
14 concerns of a particular historic property
15 versus the Historic District, you know, if the
16 specific property is in a Historic District, you
17 know, in this case you found an adverse effect,
18 not you, but it was determined there was an
19 adverse effect and then you consider mitigation
20 and so on. How was that considered in the
21 context of the overall Historic District?

22 DIR. MUZZEY: For the Alfred Pickering
23 house, it is not part of the designated
24 Newington Center Historic District. It is

1 immediately adjacent to it.

2 MR. FITZGERALD: Okay.

3 DIR. MUZZEY: And so the Alfred Pickering
4 Farm was considered as an individual resource
5 and was inventoried and evaluated specifically
6 for this Project.

7 MR. FITZGERALD: Okay.

8 PRESIDING OFFICER WEATHERSBY: So then for
9 a district such as perhaps the Durham Historic
10 District, it's evaluated as a District. Are the
11 individual properties within the District also
12 evaluated if they're historic which I'm assuming
13 many of them would be.

14 DIR. MUZZEY: So with the Durham Historic
15 District, are you talking about the downtown
16 Durham Historic District or the Durham Point
17 Historic District within this Project area?

18 PRESIDING OFFICER WEATHERSBY: Just for a
19 district in general, is analyzed, an Effects
20 Tables done for it as a District, but then do
21 the individual properties also get separately
22 analyzed just in general or does it depend?

23 DIR. MUZZEY: In general, the 106 process
24 looks at a Historic District and discusses both

1 the indirect effects of a project, if they're
2 present, and the direct effects of a project if
3 they're present. If those direct effects
4 affected individual properties, they would be
5 individually addressed.

6 PRESIDING OFFICER WEATHERSBY: Thank you.

7 DIR. MUZZEY: This is really getting down
8 in the weeds, but there are times when you can
9 have a Historic District which is important for
10 one aspect of history, and then you could have
11 an individual property within that district
12 which is considered historic for totally
13 different reasons, and in that case that
14 project, that property would be looked at
15 individually.

16 PRESIDING OFFICER WEATHERSBY: Thank you.

17 DIR. MUZZEY: It's not the case with any of
18 the properties within this district.

19 PRESIDING OFFICER WEATHERSBY: We don't
20 need to go any further into that.

21 DIR. MUZZEY: Okay. Just continuing
22 through this list of affected properties, we
23 come to on PDF page 19 the Durham Point Historic
24 District. We have the Statement of Significance

1 for that large district as well as its
2 boundaries. Then considering its relationship
3 to the proposed Project, it was determined that
4 the property was affected. I mean, pretty
5 obvious determination given that the Project
6 goes right through it. And that the criteria of
7 adverse effect under 106 were applied to it
8 beginning on pages 21.

9 And this is an important point that may
10 come up once or twice, but with the Durham Point
11 Historic District on PDF page 25 we see that the
12 Applicant's recommendation was no adverse
13 effect. The Division of Historical Resources
14 did disagree with that finding and found that it
15 was adversely affected. So the mitigation
16 documents that follow this finding do include
17 the Durham Point Historic District and what was
18 judged to be appropriate mitigation for it.

19 And there is quite a bit of discussion in
20 our record as to what the Applicant's original
21 suggested findings were and then what the
22 Division of Historical Resources and the Corps
23 of Engineers were appropriate, made the actual
24 findings under 106 and 227-C:9.

1 MR. WAY: When you make that decision that
2 there was an adverse effect, and I think you
3 just answered it, you're not just using the
4 information provided on this form. You probably
5 have other data available to help guide you on
6 that decision or are you interpreting that
7 adverse effect from what you're reading on this
8 form?

9 DIR. MUZZEY: I think both of those
10 scenarios could come into play. Again, because
11 I was not involved in the daily review of this
12 Project I don't know which of those things --

13 MR. WAY: In general.

14 DIR. MUZZEY: -- occurred, but in general
15 the agencies would use the inventory and
16 evaluation information. They would use the
17 Effects Tables as prepared. They would consider
18 the comments of the Consulting Parties, and at
19 times site visits would be called into play as
20 well for particularly difficult decisions. Lots
21 of photographs for the Durham Point Historic
22 District.

23 Moving to Portsmouth we haven't discussed
24 the Portsmouth part of this Project too much

1 yet, but there was an area recommended for
2 inventory coming out of the Project area stage.
3 That's the Gosling Meadows Housing Development
4 Historic District. Interesting to me
5 personally, because it is a 20th century
6 Historic District. One of the first responses
7 in New Hampshire for the need for public
8 housing, and it was determined to be eligible
9 for the National Register because of those
10 associations.

11 But when we turn to page PDF 35 and the
12 relationship of that area to the proposed
13 Project, we see some discussion that the Project
14 will be visible from the district, but it was an
15 indirect and potentially negligible effect and
16 as we read further through the adverse effect
17 evaluations, it was determined that there was,
18 there will be no adverse effect and that is
19 mainly to the lack of setting, and we know that
20 area of the Seacoast Reliability Project
21 directly adjacent to the malls and some of the
22 photographs that we saw yesterday of the
23 commercial and industrial setting that now
24 surrounds this domestic Historic District.

1 These are bouncing around a bit now. PDF
2 41 where we're at the Little Bay Underwater
3 Cable Terminal House's Historic District. The
4 District was, the boundary includes both the two
5 cable terminal houses as well as the underwater
6 cables. Dates to the early 20th century.
7 Again, given the anticipated effects it was
8 determined this Historic District would be
9 affected, and we see that evaluated through the
10 adverse effects part of the table. Adverse
11 effect on the Terminal House Historic District,
12 one on the Durham side will be moved but
13 returned as close as possible to its original
14 location. And some sections of the historic
15 underwater cables will be removed. The
16 rehabilitation of the Durham Cable House will be
17 done to the Secretary's standards for the
18 treatment of historic properties and that's laid
19 out as we'll see in the Memorandum of Agreement.

20 MR. WAY: Are the cables themselves
21 considered historic?

22 DIR. MUZZEY: The cables themselves are
23 considered a historic feature. They're a
24 feature of the district we obviously know very

1 little about. Historically they would have
2 played an important role, but the DHR did
3 recognize that no mitigation would be needed for
4 their removal beyond the repairs made to the
5 Durham cable terminal house, recognizing the
6 difficulty of their condition and potential
7 hazardous material.

8 MR. FITZGERALD: Does this District, this
9 District only includes land areas, correct? In
10 other words, you're considering the land areas
11 associated with Cable Houses on both sides of
12 the Bay. Is that --

13 DIR. MUZZEY: If you go to the bottom of
14 page PDF 41, it discusses what the boundary of
15 the District is. Determined eligible for the
16 National Register includes two cable terminal
17 houses and the underwater cables. And we have
18 the District specifically delineated and it does
19 run roughly .9 miles across Little Bay.

20 MR. FITZGERALD: Okay.

21 MR. WAY: Another quick question. In terms
22 of, this is only for, well, aboveground
23 resources, but cables obviously are not
24 aboveground, but archeological resources that

1 have been mentioned in the Bay, that could be in
2 the District, are they included in the District?

3 DIR. MUZZEY: The District's significance
4 is related to the use of the Cable Houses and
5 the cables themselves in providing early
6 electrical transmission. So if there were
7 archeological resources such as -- or I'm not
8 certain it would be appropriate to call them
9 archeological resources yet because they
10 wouldn't have been identified or evaluated, but
11 say an anchor was found, an early anchor was
12 found. That would not relate to the
13 significance of this Historic District. So it
14 would have to be considered on its own as an
15 archeological resource.

16 MR. WAY: Thank you.

17 DIR. MUZZEY: So PDF page 52 we have the
18 Newmarket and Bennett Roads Farms Historic
19 District in Durham. Again, another large
20 Historic District, this one totaling
21 approximately 925 acres. Characterized as the
22 most extensive and well-preserved historic
23 agricultural landscape in Durham. It was found
24 that the Project would potentially affect it.

1 Again, this is another District that the
2 Project travels through so the criteria of
3 adverse effect were applied resulting in the
4 Applicant's finding of no adverse effect. We
5 know that the Division of Historical Resources
6 interpreted that finding otherwise. And it was
7 found to have an adverse effect on the Historic
8 District. And we can discuss the suggested
9 mitigation measures as we get to our mitigation
10 agreements. Lots of photos and images
11 associated with this District as well.

12 PDF page 70, we have the Boston & Maine
13 Railroad Western Division. This is an early
14 section of railroad in New Hampshire that runs
15 from the towns of Plaistow northeast to
16 Rollinsford traveling through the Project area.

17 MR. FITZGERALD: What page are you on?

18 DIR. MUZZEY: PDF 70. This was a resource
19 that was determined eligible long before the
20 Seacoast Reliability Project undertook its
21 identification efforts back in 1993. The
22 boundary in relationship to the Project are
23 explored, and this is different than some of the
24 earlier determinations we've discussed in that

1 the finding is no historic properties affected.
2 Given the significance of the railroad, its
3 transportation and industrial significance, it
4 was not found that this type of addition to the
5 corridor would have any type of effect on the
6 Historic District, and, therefore, we don't have
7 the parts of the table that include the criteria
8 of adverse effect because we are, the DHR has
9 found that no historic properties are affected.

10 PRESIDING OFFICER WEATHERSBY: Director
11 Muzzey, did this corridor include what is now
12 the UNH Dairy Bar, the old train station? I
13 think the Stone House is referred to. Seems
14 like that's more past Durham.

15 DIR. MUZZEY: So if we look at PDF page 70,
16 the boundary includes the right-of-way
17 associated with the railroad. We would have to
18 have a more detailed look to see whether or not
19 that includes the Dairy Bar or not. I believe
20 the Stone House is a different property
21 entirely.

22 Interestingly, this is a case where we have
23 a transportation-oriented Historic District
24 traveling through the University of New

1 Hampshire Historic District, and that District
2 has different areas of significance so we'll
3 talk about that in a different way when we get
4 there.

5 The Stone House Farm follows on page 71.
6 That's on Durham Point Road in Durham. Unusual
7 case with the Stone House Farm in that the
8 property owners refused accessibility, and so
9 some very general conclusions had to be drawn
10 about the property's current appearance. Its
11 history was studied, and it was found to be
12 significant for its historical association with
13 New Hampshire farms for summer homes, the
14 movement of the early 20th century where many
15 farms were revitalized in New Hampshire after
16 prior abandonment.

17 In evaluating its relationship to the
18 Project it was found that the historic property
19 was potentially affected and so the criteria of
20 adverse effect were applied, and it was judged
21 to have a no adverse effect to the property.
22 And again, those were not based on someone being
23 on the property and making those determinations,
24 but what could be gathered in other ways.

1 PDF 79, the Newington Center Historic
2 District, this is a long-established Historic
3 District that was listed on the National
4 Register in 1987. It was expanded in 1991 to
5 include the Town Forest. Another large District
6 containing approximately 161 acres. The Frink
7 Farm is part of this District. It's on the edge
8 of the District.

9 The District will be affected by the
10 Project given that the Project runs through it,
11 and again, the criteria of adverse effect were
12 applied and the DHR determined that the project
13 would not have an adverse effect on the
14 District. We know that a transition structure
15 will be on the edge of the District on the Frink
16 Farm, but it was not found that the transition
17 structure would alter the character defining
18 setting and scenic views in a manner that
19 diminish the overall integrity of the District.

20 I would note that that, I believe, is a
21 different finding than what he found under our
22 aesthetics review of the Project, but, again,
23 the aesthetic criteria are different than the
24 historical criteria.

1 Almost through here. Page 89.
2 Pickering-Rowe House, 50 Old Post Road in
3 Newington. Early house constructed circa 1710
4 and later changed and expanded. Eligible for
5 the National Register. It will be potentially
6 affected by the Project. In applying the
7 adverse effect criteria, it was determined that
8 it will not be adversely affected by the
9 Project.

10 Again, this gets back to the idea that
11 determinations of effect are based on why a
12 property is significant, and if we flip back to
13 that, it was mainly found to be significant for
14 its architecture but also for its historic
15 associations with people who live there. And
16 those aspects of its significance were not found
17 to be adversely affected by the Project.

18 We come to the largest District, I believe,
19 of all, the University of New Hampshire Historic
20 District in Durham. There's a number of
21 different areas of significance. Given that the
22 Project travels through it, it will be affected
23 and the adverse effect findings on page 102 were
24 that there was no adverse effect under Section

1 106 because the Project would not diminish the
2 District's significance for its historic
3 associations or its architectural associations.
4 Again, a bit different than how we discussed
5 this area yesterday during our aesthetics
6 determination.

7 And let's see if we have one more. Yes.
8 So that concludes the list of historic
9 aboveground properties that were considered by
10 the Division of Historical Resources and the US
11 Army Corps of Engineers and the effects findings
12 that came out of that effort. I appreciate your
13 patience as we went through all of those. I
14 know it was a ton of material.

15 PRESIDING OFFICER WEATHERSBY: I think then
16 we'll break for lunch and come back at one
17 o'clock. Thank you.

C E R T I F I C A T E

I, Cynthia Foster, Registered Professional Reporter and Licensed Court Reporter, duly authorized to practice Shorthand Court Reporting in the State of New Hampshire, hereby certify that the foregoing pages are a true and accurate transcription of my stenographic notes of the hearing for use in the matter indicated on the title sheet, as to which a transcript was duly ordered;

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this transcript was produced, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.

Dated at North Sutton, New Hampshire, this 15th day of December, 2018.

Cynthia Foster, LCR